

Council Substitute for
Committee Substitute for House Bill No. 887

An act relating to the Career Service System; amending s. 110.227, F.S.; revising criteria for certain rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service; increasing the amounts of time in which to submit grievances and respond to grievances; revising notice requirements; increasing the amount of time in which the employee must file an appeal to the Public Employees Relations Commission; revising procedures applicable to appeals filed with the commission; providing for the removal and placement of certain career service employees serving a probationary period; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (4), (5), and (6) of section 110.227, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

110.227 Suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances.—

(2)(a) The department shall establish rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service. Except with regard to law enforcement or correctional officers, firefighters, or professional health care providers, rules regarding layoff procedures shall not include any system whereby a career service employee with greater seniority has the option of selecting a different position not being eliminated, but either vacant or already occupied by an employee of less seniority, and taking that position, commonly referred to as “bumping.”

(b) For the implementation of layoffs as defined in s. 110.107, the department shall develop rules requiring retention of the agency’s employees based upon objective measures that give consideration to be given to comparative merit, demonstrated skills, and the employee’s experience, and the employee’s length of service. Such rules shall be approved by the Administration Commission before ~~prior to~~ their adoption by the department.

(4) A grievance process shall be available to career service employees who have satisfactorily completed at least a 1-year probationary period in their current positions. A grievance is defined as the dissatisfaction that occurs when an employee believes that any condition affecting the employee is unjust, inequitable, or a hindrance to effective operation. Claims of discrimination and sexual harassment or claims related to suspensions, reductions in pay, demotions, and dismissals are not subject to the career service grievance process. The following procedures shall apply to any grievance filed pursuant to this subsection, except that all timeframes may be extended in writing by mutual agreement:

(a) Step One.—The employee may submit a signed, written grievance on a form provided by the agency to his or her supervisor within ~~14~~ 7 calendar days following the occurrence of the event giving rise to the grievance. The supervisor must meet with the employee to discuss the grievance ~~within~~ and provide a written response to the employee ~~within 7~~ 5 business days following receipt of the grievance.

(b) Step Two.—If the employee is dissatisfied with the response of his or her supervisor, the employee may submit the written grievance to the agency head or his or her designee within 7 ~~2~~ business days following receipt of the supervisor's written response. The agency head or his or her designee must meet with the employee to discuss the grievance within 5 business days following receipt of the grievance. The agency head or his or her designee must respond in writing to the employee within 5 business days following the meeting. The written decision of the agency head shall be the final authority for all grievances filed pursuant to this subsection. Such grievances may not be appealed beyond Step Two.

(5)(a) A career service employee who has satisfactorily completed at least a 1-year probationary period in his or her current position and who is subject to a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal shall receive written notice of such action at least 10 days prior to the date such action is to be taken. Subsequent to such notice, and prior to the date the action is to be taken, the affected employee shall be given an opportunity to appear before the agency or official taking the action to answer orally and in writing the charges against him or her. The notice to the employee required by this paragraph may be delivered to the employee personally or may be sent by certified mail with return receipt requested. Such actions shall be appealable to the Public Employees Relations Commission as provided in subsection (6). Written notice of any such appeal shall be filed by the employee with the commission within 21 ~~14~~ calendar days after the date on which the notice of suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal is received by the employee.

(b) In extraordinary situations such as when the retention of a career service employee who has satisfactorily completed at least a 1-year probationary period in his or her current position would result in damage to state property, would be detrimental to the best interest of the state, or would result in injury to the employee, a fellow employee, or some other person, such employee may be suspended or dismissed without 10 days' prior notice, provided that written or oral notice of such action, evidence of the reasons therefor, and an opportunity to rebut the charges are furnished to the employee prior to such dismissal or suspension. Such notice may be delivered to the employee personally or may be sent by certified mail with return receipt requested. Agency compliance with the foregoing procedure requiring notice, evidence, and an opportunity for rebuttal must be substantiated. Any employee who is suspended or dismissed pursuant to the provisions of this paragraph may appeal to the Public Employees Relations Commission as provided in subsection (6). Written notice of any such appeal shall be filed with the commission by the employee within 21 ~~14~~ days after the date on

which the notice of suspension, reduction in pay, demotion, or dismissal is received by the employee.

(6) The following procedures shall apply to appeals filed pursuant to subsection (5) with the Public Employees Relations Commission, hereinafter referred to as the commission:

(a) The commission must conduct a hearing within ~~60~~ 30 calendar days following the filing of a notice of appeal. No extension of time for the hearing may exceed 30 calendar days, absent exceptional circumstances, and no extension of time may be granted without the consent of all parties. Discovery may be granted only upon the showing of extraordinary circumstances. A party requesting discovery shall demonstrate a substantial need for the information requested and an inability to obtain relevant information by other means. Except where inconsistent with the requirements of this subsection, the provisions of s. 447.503(4) and (5) and chapter 120 apply to proceedings held pursuant to this subsection.

(b) A person may represent himself or herself in proceedings before the commission or may be represented by legal counsel or by any individual who qualifies as a representative pursuant to rules adopted by the commission.

(c) If the commission finds that cause did not exist for the agency action, the commission shall reverse the decision of the agency head and the employee shall be reinstated with or without back pay. If the commission finds that cause existed for the agency action, the commission shall affirm the decision of the agency head. The commission may not reduce the penalty imposed by the agency head, except in the case of law enforcement or correctional officers, firefighters, and professional health care providers, if the commission makes specific written findings of mitigation.

(d) A recommended order shall be issued by the hearing officer within 30 days following the hearing. Exceptions to the recommended order shall be filed within ~~15~~ 5 business days after the recommended order is issued. The final order shall be filed by the commission no later than ~~45~~ 30 calendar days after the hearing or after the filing of exceptions or oral arguments if granted.

(e) Final orders issued by the commission pursuant to paragraph (d) shall be reviewable as provided in s. 447.504.

(8) A career service employee who is serving a probationary period in a position to which he or she has been promoted may be removed from that promotional position at any time during the probationary period but must be returned to his or her former position, or comparable position, if such a position is vacant. If such a position is not available, before dismissal, the agency shall make a reasonable effort to retain the employee in another vacant position. This subsection does not apply to terminations for cause as described in subsection (1), nor does it create a right to "bump" an employee from an occupied position as described in paragraph (2)(a).

Section 2. This act shall take effect January 1, 2009.

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.